

Application No.: 09/699,922

Docket No.: 00-4026

REMARKS

Claims 1-20 and 24 are currently pending. Claims 21-23 are herein canceled without prejudice in light of the Examiner's restriction requirement. Applicant thanks the Examiner for indicating that claims 17-20 are allowed and claims 2 and 10 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The Examiner has rejected claims 1, 3, 4, 7, 8, 15, 16 and 24 under 35 U.S.C. §103(a) in light of U.S. Patent No. 5,386,478 (Plunkett) alone. The Examiner has rejected claims 5, 6, 9, 11, 12, 13 and 14 under 35 U.S.C. §103(a) in view Plunkett, as modified by one or more of U.S. Patent No. 6,584,201 (Konstantnou), U.S. Patent No. 6,061,455 (Hadley), and U.S. Patent No. 5,386,478 (Sansur). Applicant has amended independent claims 1, 8, 9, 15, 16, and 24 to further define the invention.

The pending claims are directed to methods and apparatuses, as applicable, for adjusting the volume level of an audio device. Claim 1, for example, includes the following steps:

receiving a first audio signal from the audio device;

receiving a *data packet* from the audio device, the data packet comprising a second audio signal *that is sampled at the audio device*;

determining whether a difference between the first audio signal and the second audio signal exceeds a threshold value; and

adjusting the audio level of the audio device when the difference between the first audio signal and the second audio signal exceeds the threshold value.

Thus, as amended, the *data packet* received from the audio device in claim 1 comprises a second audio signal *that is sampled at the audio device*. Thereafter, it is determined if a difference between the first and second audio signals exceeds a threshold. In this way, it is possible to determine whether the difference between the audio signal as it exists at the audio device is sufficiently different from the audio signal as it is remotely received to warrant adjusting the level of the audio signal at the audio device. The prior art references relied upon by the Examiner do not disclose the step of "receiving a data packet from the audio device, the data packet comprising a second audio signal that is sampled at the audio device."

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The Examiner relies upon primary reference Plunkett for the step of "receiving a data packet from the audio device, the data packet comprising a second audio signal." See, Office Action, pp. 2-3. Plunkett discloses a system for automatically adjusting a sound quality of a stereophonic system 18 (Fig. 1; col. 1, lines 6-10). Plunkett places a microphone 36 in a remote control 34 to sequentially detect a first audio test signal 12L from loudspeaker 14L and then a second audio test signal 12R from loudspeaker 14R. (Fig. 1; col. 3, lines 21-52). Plunkett uses the respective audio signals from the two loudspeakers 14L and 14R to determine if there is an unbalance in the signals, and, if so, makes a balance adjustment (col. 3, lines 36-52).

At the outset, as set forth in Applicant's Request for Reconsideration filed on January 30, 2004, Applicant respectfully submits that Plunkett does not disclose the step of "receiving a data packet" at all. Element 12R – which the Examiner alleges constitutes a "data packet" – is an audio signal that is delivered from the right loudspeaker of stereophonic system 18. The Examiner does not dispute this. Nonetheless, the Examiner now asserts that it would have been "obvious for one of ordinary skill in the art at the time the invention was made to recognize the tone burst [audio signal] from loudspeaker 14R as a data packet containing amplitude information..." See, Office Action, p.3. Applicant respectfully submits that the Examiner has not offered any support for its assertion that a tone burst delivered from a loudspeaker, i.e., an audible signal, is a "data packet", as recited in claim 1, or that it would have been obvious to "recognize" an audible signal as a "data packet." Like claim 1, all of the other pending claims recite a "data packet." For at least this reason, Applicant submits that claims 1, 3-9, 11-16 and 24 are allowable over the cited prior art.

Further, all of the pending claims, as amended, recite that the second audio signal be "sampled at the audio device." Audio signal 12R, which the Examiner alleges is the "data packet comprising a second audio signal", is not "sampled at the audio device." Rather, audio signal 12R is received by a microphone 36 in the remote control unit 34. Indeed, Plunkett's balance adjustment system must receive (or sample) the audio signal 12R at the remote control unit 34 in order to determine if the audio signals 12R and 12L are balanced at the physical location of the remote control unit 34. Plunkett's system could not determine if audio signals 12R and 12L were balanced if signal 12R was sampled at the stereophonic system 18. None of the other cited prior art cures this deficiency in Plunkett. Thus, for this additional reason, Applicant submits that claims 1, 3-9, 11-16 and 24 are allowable over the cited prior art.

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CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 07-2347, under Order No. 00-4026 from which the undersigned is authorized to draw. To the extent necessary, a petition for extension of time under 37 C.F.R. 1.136 is hereby made, the fee for which should also be charged to this Deposit Account.

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Respectfully submitted,

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